

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
MICHAEL J. AQUINO, )  
Appellant, )  
vs. )  
SPOKANE COUNTY AIR POLLUTION )  
CONTROL AUTHORITY, )  
Respondent. )

PCHB No. 116

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This is the appeal of a \$50.00 civil penalty for an alleged violation of respondent's open burning standards as specified in its Regulation I. The matter came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) in proceedings held in respondent's conference room in Spokane at 9:00 a.m., September 21, 1972. The hearing was recessed for an hour to obtain the testimony of an additional witness.

Appellant appeared and later was joined by his son, Michael A. Aquino. Respondent was represented by its Director, Fred A. Shiosaki. David Storey, court reporter, prepared the record. Witnesses were

1 sworn and testified. Exhibits were offered and admitted.

2 On the basis of testimony heard and exhibits examined, the Pollution  
3 Control Hearings Board prepared Proposed Findings of Fact, Conclusions  
4 and Order which were submitted to the appellant and respondent on  
5 October 4, 1972. No objections or exceptions to the Proposed Findings,  
6 Conclusions and Order having been received, the Pollution Control  
7 Hearings Board makes and enters the following:

8 FINDINGS OF FACT

9 I.

10 Appellant operates the Burger Royal Drive-in at East 6115 Trent  
11 Avenue, Spokane County. He rents the restaurant building from  
12 a relative by marriage who operates two nearby duplex apartments. The  
13 rental arrangement is a "family" affair with no sharp definition of the  
14 parking area which surrounds the restaurant and abuts on the apartments.  
15 In this undefined area are two barrels used for burning and a "dumpster"  
16 garbage disposal facility used by appellant who pays \$20.00 a month for  
17 this service. It is not clear from the evidence who has legal  
18 responsibility for the area on which the barrels are located.

19 II.

20 On April 11, 1972, a plume of black smoke arose from a fire in one  
21 of the barrels. Material being burned included paper and other similar  
22 material used by the drive-in restaurant. A period of permissible  
23 burning of household vegetation material was in process at the time;  
24 this permissible period of vegetation burning, however, forbade the  
25 incineration of other waste material.

26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER

1 III.

2 Respondent issued a Notice of Violation to appellant and, because of  
3 a previous no penalty violation during July, 1970, invoked a \$50.00 civil  
4 penalty for the instant violation. That penalty is the subject of this  
5 appeal.

6 IV.

7 Both appellant and his adult son, the only persons working in the  
8 restaurant at the time of the alleged violation, deny flatly that they  
9 placed any restaurant waste in the barrel or started the fire therein.  
10 They surmise that another person, doing ground clean up in and near the  
11 apartments, may have included waste paper discarded by restaurant patrons  
12 in a fire set by that other person.

13 From these Findings of Fact, the Pollution Control Hearings  
14 Board comes to these

15 CONCLUSIONS

16 I.

17 There is no question that unlawful outdoor burning of prohibited  
18 material occurred in a barrel on the premises at East 6115 Trent Avenue,  
19 Spokane, on April 11, 1972.

20 II.

21 It does not seem reasonable, however, that appellant--paying \$20.00  
22 a month for a haul-away garbage disposal service--would use an illegal  
23 method of disposal and thereby run the risk of incurring a civil penalty  
24 violation. In placing belief in the sworn testimony of appellant and his  
25 son that they had nothing to do with the fire, we are in no way reflecting  
26 on the testimony of respondent. We believe respondent had the right fire,

27 FINDINGS OF FACT,  
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1 but incorrectly identified the person, or persons responsible for the  
2 violation.

3 Therefore, the Pollution Control Hearings Board issues this

4 ORDER

5 The appeal is sustained and the \$50.00 civil penalty is set aside.

6 DONE at Olympia, Washington this 8th day of November, 1972.

7 POLLUTION CONTROL HEARINGS BOARD

8 Walt Woodward  
9 WALT WOODWARD, Chairman

10 Matthew W. Hill  
11 MATTHEW W. HILL, Member

12 James T. Sheehy  
13 JAMES T. SHEEHY, Member

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27 FINDINGS OF FACT,  
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